

**REMARKS**

· Claims 1-21 are pending in the application.

Claims 1-21 have been rejected.

Claims 8, 10, and 11 have been amended as set forth herein.

A replacement sheet for Figure 1 is attached, marking Figure 1 as “prior art” according to the Examiner’s express requirement. No admission is made thereby.

Reconsideration of the claims is respectfully requested.

**I. CLAIM REJECTIONS UNDER 35 U.S.C. § 101:**

Claims 8-21 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 8, 10, and 11 have been amended to eliminate “means for” language and to specify that a hardware data processing system, configured to perform certain functions, is being claimed. This is clearly statutory subject matter.

The specification has been amended to eliminate “transmission type mediums” as possible computer-readable mediums. This is believed to alleviate the Examiner’s concerns with regard to claims 15-21.

All statutory subject matter rejections are believed obviated. Accordingly, the Applicant respectfully requests the Examiner withdraw the double patenting rejection.

## II. CLAIM REJECTION UNDER 35 U.S.C. § 103

Claims 1-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Nos. 6,112,225 to *Kraft et al.*, hereinafter “Kraft” and U.S. Patent No. 6,360,268 to *Silva et al.*, hereinafter “Silva”. The Applicant respectfully traverses the rejection.

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a *prima facie* case of obviousness. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). See also *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984)). It is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. (*Id.* at 1073, 5 USPQ2d at 1598). In so doing, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5, August 2006). To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there

must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

Claim 1 requires receiving a test request. The Examiner argues that this is taught a Kraft at col. 9, lines 1-27. This portion of Kraft teaches:

When step 608 finds that the host peripheral computer 106 is idle, the screen saver 204 initiates its screen saver in step 609 to prevent damage to the peripheral computer's monitor; this is only an option, however, and the screen saver function may be omitted entirely. More important, the screen saver 204 in step 609 also sends a message to the task manager 206 indicating that the peripheral computer 106 is idle. In response, the task manager 206 in step 610 determines whether the task execution engine 208 is already engaged in computation of an uncompleted subtask. If so, the task manager 206 retrieves the intermediate results from the buffer 210 (step 616), and directs the task execution engine 208 to continue executing the subtask (step 618). In another embodiment, steps 610 and 616 may be omitted; in this case, uncompleted subtasks interrupted by the user's applications or other activity are aborted and restarted when the next idle period begins.

Alternatively, if step 610 finds no subtask already in progress, the task manager 206 in step 612 requests a subtask. This involves submitting a subtask request to the coordinating computer 102. To benefit the coordinating computer 102, the subtask request may be accompanied by a machine-readable description of the peripheral computer's hardware components, operating system, and the like. Upon receipt of the subtask (step 614), the peripheral computer 106 has "subscribed" to the coordinating computer's aggregate task. At this point, the task execution engine 208 may start computing the subtask in step 618.

Kraft does teach that a subtask request is sent to coordinating computer 102 (which, of course, receives it).

Claim 1 also requires sending executable program code, corresponding to the test request, to a client system. Kraft appears to teach that a subtask is then received by peripheral computer 106, which may have been sent by the coordinating computer 102.

Claim 1 also requires receiving a response from the client system indicating that the client system will perform a test, and indicating that the client system was not being actively used when the executable program code was sent. This is not taught or suggested by Kraft. The Examiner refers again to the passage reproduced again, but it is clear that coordinating computer 102 does not receive any sort of response indicating that the peripheral computer will perform a subtask, nor does coordinating computer 102 receive any sort of response indicating that the peripheral computer was not being actively used when the subtask was sent.

Kraft does not teach or suggest this limitation of claim 1. Nor does Silva, nor does the Examiner allege any such teaching in Silva.

None of the cited references teach or suggest this limitation of claim 1, alone or in combination, or the similar limitations of claims 8 and 15. The rejections, therefore, of claims 1-3, 8-10, and 15-17 are traversed.

Claim 4 requires receiving executable code from a server system in a client data processing system. The Examiner again refers to Kraft's col. 9, lines 1-27, reproduced above. Kraft does teach that a "subtask" is received by peripheral computer 106. Though not specified, it may be from coordinating computer 102.

Claim 4 also requires if the client data processing system is in an idle state when the executable code is received, then sending a response to the server system, testing at least a portion of the executable code, and sending test results to the server system. The Examiner again refers to Kraft's col. 9, but Kraft does not teach or suggest this limitation. There is no response sent to the coordinating computer upon receipt of the subtask, whether or not the peripheral computer is idle when the subtask is received. Nor does Silva teach this limitation.

None of the cited references teach or suggest this limitation of claim 4, alone or in combination, or the similar limitations of claims 11 and 18. The rejections, therefore, of claims 4-7, 11-14, and 18-21 are traversed.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 103 rejection with respect to these claims.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

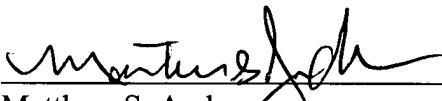
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *manderson@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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